

**Pennsylvania Opioid Misuse and Addiction Abatement Trust**  
**Public Meeting of February 8<sup>th</sup>, 2024, 2:00 - 3:30PM**  
222 Chestnut Street, Harrisburg, PA, Room 211C  
<https://us02web.zoom.us/j/81574002276>

**MINUTES**

**Board of Trustee Attendees (10):**

- Chair Thomas VanKirk (In person)
- Commissioner Kevin Boozel (Zoom)
- Erin Dalton (Zoom)
- Commissioner Gene DiGirolamo (Zoom)
- Representative Jim Gregory (Zoom)
- Steve Jasper (Zoom)
- Shea Madden (In person)
- Commissioner Robert Postal (Zoom)
- Senator Greg Rothman (Zoom)
- Senator Christine Tartaglione (Zoom)

**Board of Trustees Not Attending (3):**

- Secretary Latika Davis-Jones
- Representative Mark Rozzi
- Dr. J. Jean Wright II

**Other Attendees:**

- Jayson Wolfgang, Buchanan Ingersoll & Rooney (In person)
- Jordan Yeagley, Buchanan Ingersoll & Rooney (In person)
- Lisa Ritter (Maher Duessel)
- Dennis Scanlon, Penn State University (In person)
- Glenn Sterner, Penn State University (In person)
- Neil Mara, Office of Attorney General (Zoom)
- Tyler Ritchie, Office of Attorney General (Zoom)
- Mike Sage, CCAP (In person)
- Heather Hiester, CCAP (In person)
- Kimberly Ade, CCAP (In person)

**Announcements:**

- Welcome to members of public attending in person and on Zoom.
- The Board of Trustees held an Executive Session immediately prior to the public meeting for the purpose of receiving litigation updates, legal and tax advice.

- This meeting has been duly advertised as a public meeting in accordance with the Sunshine Act and is therefore open to the public as observers.
- Participation in the meeting was limited to Trustees and representatives from their offices and guests from the Trust's advisors and partners.
- The meeting is being recorded and will be placed on the Trust's website.
- A quorum of Trustees is present at the meeting.

### **Approval of Prior Meeting Minutes**

Minutes from the November 30, 2023 public meeting were circulated in advance and approved unanimously by Trustees in attendance.

### **Report from Lisa Ritter/Maher Duessel and CCAP Concerning Administrative Expenses Incurred and Total Distributions Made in 2023**

Lisa Ritter presented the findings of Maher Duessel, which determined that Trust income is not taxable but federal returns should be filed for 2022 and 2023. It is possible that a late fee may be assessed as a result of the late filing of the Trust's 2022 federal statement; additional information will be included along with the filing for 2022 in an effort to avoid any potential penalty.

A cash basis income/expense statement was prepared for January 1, 2023-December 31, 2023. The Trust received investment income from Wilmington Trust of \$2,030,378 and interest income from M&T Bank of \$1,965. The Trust received settlement as follows from Distributors - \$45,599,278; J&J - \$25,705,389; and Mallinckrodt - \$15,278,845. Total income for the Trust was \$88,615,855.

There were a series of administrative expenses for calendar year 2023 that included: Wilmington Trust fees of \$13,845 and M&T Bank fees of \$265. There was legal expense for Right-to-Know Law appeals of \$117,516; general legal advice was \$147,049. There were distributions to the Commonwealth of \$10,021,311. Distributions were made to the fee fund of \$11,515,941 and distributions to Participating Subdivisions of \$56,787,426. The Trust's net income for year ended December 31, 2023, totaled \$10,012,502. That income will not be taxable.

Per Chair VanKirk, CCAP, Maher Duessel and Penn State administrative expenses were paid in January of 2024, so they were not included in the report. The Trust will strive to ensure that all administrative expenses will be paid solely from the interest earned on the Trust funds, not settlement monies, if possible. Also, the Trust will try to obtain information from other States as to their approximate administrative expenses.

There were approximately 8-10 Right-to-Know Law appeals, including extensive briefing, the outcome of which is that the Trust is not subject to the Right-to-Know Law.

## **Resolution to Authorize Maher Duessel to Prepare and File Tax Returns**

Chair VanKirk presented the following resolution for approval:

Resolved, that the Board of Trustees of the Pennsylvania Opioid Misuse and Addiction Abatement Trust hereby authorizes Maher Duessel to file any necessary tax returns on behalf of the Trust, drafts of which will be shared with Trustees in advance; and further, that Tom VanKirk as Chair of the Board of Trustees is authorized to sign such returns on behalf of the Trust.

Commissioner Boozel made a motion to approve the resolution as presented. Senator Tartaglione seconded the motion. The motion was approved unanimously by Trustees in attendance.

## **Report from Attorney General's Office Regarding Status of Wave 2 Settlements**

Tyler Ritchie, Office of Attorney General, provided an update on the status of Wave 2 settlements noting that the settlements are in the process of being finalized. The Office of Attorney General is working with opposing counsel for the settling defendants to finalize the consent judgments and anticipate filing them with the Commonwealth Court in the near future. After filing with the Commonwealth Court, the OAG will await approval and, once obtained, copies of that approval will be sent to the National Administrators, BrownGreer. After BrownGreer obtains proof that the consent judgments were entered, funds will be sent from the National Trust to the Pennsylvania Trust. Overall, the OAG estimates \$570 million over the next 15 years for Wave 2; this is subject to change depending on factors such as the District Attorney litigation and participation figures for Wave 2. Further, the OAG will remain in communication with the Trust regarding any updates to the timeline of these settlements as well as the total amount.

Walmart's settlement, if approved by the Commonwealth Court, will largely be paid in one lump sum payment (about \$90 million) with smaller payments to occur at the end of the settlement term.

There was a concern voiced by some Trustees that, given the large sum of money from Walmart in one year, more time should be granted, beyond 18 months, to spend Walmart settlement monies without having to ask for an extension of time. The Chair requested the OAG, via its drafting of the Commonwealth Court order for Walmart, seek more time for the expenditure of the Walmart settlement funds, so Counties have more time to spend the money. It is anticipated that the Trust will distribute the funds so that the Counties who are receiving the money can earn interest and use that to offset administrative expenses.

Tyler Ritchie confirmed that the additional time regarding the Walmart settlement funds has been added to the proposed Commonwealth Court order for Walmart.

**Report from Penn State/Temple/Pitt Regarding Status of Payees’ Opioid Spending Report Due on March 15, 2024**

Dennis Scanlon of Penn State University represented the group (Penn State/Pitt/Temple) that created a reporting tool that all payees will use to respond with information on how settlement funds were spent or committed and how it relates to appropriate uses under Exhibit E. Over the last 8 months the group has developed this electronic, online reporting tool for the Trust. They developed the tool to make it user friendly and conducted demonstrations and webinars, to which all recipients were invited. Information about the tool, a memo that outlines the need to report, instructions, and a link to a webinar video about the tool are on the Trust website.

The current reporting period covers funds received August 1, 2022-December 31, 2023. There will be subsequent reporting periods. Information about the money disbursed to the payee will be confirmed in addition to demographics and attestations that the funds used for each program were done according to the settlement. Each recipient is asked to report on opioid remediation activities/efforts and how much has been spent on each program, along with the name of program, contract/entity running the program, money spent to date, and money budgeted for future use. Additionally, for each program, the recipient must select a specific checkbox that matches Exhibit E, including Schedules A and B thereto, and provide details related to specific uses of funds per the settlement requirements.

The deadline for reporting is March 15<sup>th</sup>. Once submitted, the Penn State/Pitt/Temple group will do a quality check of the data provided, while the Trust will review the expenditures for compliance with Exhibit E, per the settlement.

The Penn State/Pitt/Temple group is also working with the Trust on how to present the data to the public. To date, the group has had 30 Payees that have used the tool to some extent – 5 submitted completed responses; 10 provided some level of detail but are working on completion; 15 engaged with the tool. There are still a number that have not used the tool; however, they have until March 15<sup>th</sup> to submit.

**Discussion of Trust Review Process for Reports filed by March 15**

Chair VanKirk stated that the Trust’s responsibility, in addition to making sure that the money is distributed, is to then review how the money was spent and ensure such expenditures were in accordance with Exhibit E. For the Counties that have submitted so far, one county included 29 separate programs listed in its report. It is anticipated that this will be in line with the volume of what other Counties may report with some being considerably more. Given the workload of the Trust, in reviewing all 67 counties reporting in detail along with conducting inquiries, the Chair proposed dividing the County reviews into 3 working groups with 4 Trustees assigned to each group, apportioning reports in a way that each working group would review reports reflecting approximately equal population numbers. Commissioners will not review their own County reports. In the case of General Assembly members, they may be assigned to Counties that they may represent, subject to strict confidentiality. Members of the General Assembly will not discuss their assigned report(s) with individual County representatives until the Trust has the opportunity to review and act on

recommendations from the working groups. It was proposed that Chair VanKirk would serve on each working group, along with certain advisory members including CCAP and counsel for the Trust.

Each working group will be responsible for reporting their recommendations to the full Board of Trustees at a public meeting. The working groups will not take votes, only make recommendations. If the working groups have additional questions for the County regarding its expenditure of funds, the working group is responsible for addressing those questions to the County, through CCAP, and providing a final recommendation to the Board. The full Board will then render a final decision in an open public meeting subject to a vote by the entire Board of Trustees. The meetings of the working groups will not be open to the public, which the Trust believes is permissible under the Sunshine Act. Chair VanKirk presented the following resolution for approval:

RESOLVED, that, the Board of Trustees of the Pennsylvania Opioid Misuse and Addiction Abatement Trust hereby authorizes the Chair of the Board to establish three working groups of four (4) Trustees each to review essentially equal numbers of the annual reports submitted by recipients of Trust funds pursuant to Section V.D.11 of the Order of the Commonwealth Court entered July 12, 2022. The Chair, a representative of the County Commissioners Association of Pennsylvania and counsel for the Trust will serve as advisory members of each working group.

Each working group will review the reports of expenditures of Trust funds and make recommendations to the full Board of Trustees regarding compliance with Exhibit E, appended to the Order of the Commonwealth Court entered July 12, 2022.

The working groups will not have any authority to take official action but will submit their recommendations to be reviewed and acted upon by the full Board of Trustees at a public meeting.

Shea Madden made a motion to approve the resolution as presented. Commissioner Postal seconded the motion. The motion was approved unanimously with no further discussion by Trustees in attendance.

Members of each working group and the Counties being reviewed will be available on the Trust website.

### **Discussion of Trust Review Process for Reports Filed by March 15, 2023**

Chair Tom Vankirk stated that, after reviewing initial reporting, there is concern that funds are not being spent in a timely fashion as required by the Trust Order. He stated that this is not surprising, as a significant amount of the money was not received by the Counties until late December 2022. They have until June 30, 2024 to spend those funds, with reporting being required by the Trust by March 15. Penn State suggested that the Trust could receive more information if a second reporting period was required. This would provide a fuller view of the expenditure of funds received 18 months prior to June.

Chair VanKirk proposed implementing a second reporting deadline of September 15<sup>th</sup> and making it mandatory for, at least, 2024. The Chair will review the Trust Order, since an amended Order will be submitted to the Commonwealth Court. If additional language needs to be included, Chair VanKirk will discuss the same with the Office of Attorney General. The second reporting date will be reviewed in the future to make sure it is not overly burdensome on the Counties or the Trust.

Chair VanKirk presented the following resolution for approval:

Resolved, that a second reporting requirement be approved by the Trust for all monies received prior to June 30<sup>th</sup> of the year in which the report is due. Such additional reporting will be due by September 15<sup>th</sup>, subject to authorizing language in the amended order and future review and adjustment by the Board of Trustees.

Senator Tartaglione made a motion to approve. Commissioner DiGirolamo seconded the motion. The motion was approved unanimously by Trustees in attendance.

### **Discussion of Operating Procedure for Responding to Inquiries from Outside Third Parties**

Chair VanKirk reported that the Trust received inquiries from outside third parties (not Trust fund recipients). For example, in recent months there have been numerous inquiries from sources outside of the Commonwealth from organizations that are not associated with the Trust in any way. These inquiries have generally related to how Pennsylvania is spending its money and other questions related to the distribution of funds. Although the Trust wants to be transparent, these organizations are often conducting their own research and not serving any legitimate purpose for the Trust or the public in Pennsylvania. Moreover, such inquiries require the Trust to expend its limited resources providing information to individuals or entities who do not receive Trust funds and who otherwise have no role under the Trust Order.

Chair VanKirk presented the following resolution for approval:

Resolved, that, the Board of Trustees of the Pennsylvania Opioid Misuse and Addiction Abatement Trust hereby authorizes its administrator, the County Commissioners Association of Pennsylvania, to respond to requests for information submitted by outside third parties (e.g., those who do not receive Trust funds pursuant to or otherwise have a role under the Trust Order) by referring them to the Trust's website and public meetings of the Board of Trustees. No further comment(s) should be provided beyond such information.

Senator Tartaglione made a motion to approve the resolution as presented. Shea Madden seconded the motion. The motion was approved unanimously by Trustees in attendance.

### **Discussion of Transparency of Opioid Spending Filings**

The Trust intends to post, after any necessary approvals in a public meeting(s), how Trust funds were spent by the Counties and others so that members of the public can view that information. The public

has a right to know and will likely be pleased with the spending, and the Trust plans to be transparent by sharing that information at the appropriate time.

**New Business**

No new business was brought forth to the Trust.

Chair Vankirk adjourned the meeting at 3:20 pm.

Reminder of Upcoming Meetings:

- May 2, 2024
- June 20, 2024